

## **Attachment 6**

HEALY & BAILLIE, LLP  
Attorneys for Plaintiff  
61 Broadway  
New York, NY 10006  
(212) 943-3980  
Richard V. Singleton (RS-9489)  
John C. Koster (JK-4086)  
David D. Jensen (DJ-2261)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IROQUOIS GAS TRANSMISSION SYSTEM L.P.,

Plaintiff,

-against-

ASSOCIATED ELECTRIC & GAS INSURANCE  
SERVICES LTD., Hamilton, Bermuda; CERTAIN  
UNDERWRITERS AT LLOYD'S; AON RISK  
SERVICES OF TEXAS, INC.; and AMERICAN  
HOME ASSURANCE CO.,

Defendants.

(ECF Case)

05 Civ. 2149 (JSR)

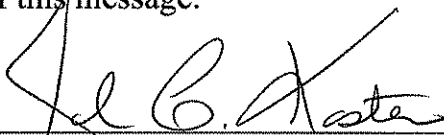
**AFFIDAVIT OF JOHN C.  
KOSTER**

John C. Koster, being duly sworn, deposes and says:

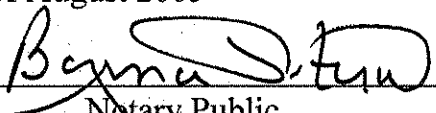
1. I am a member of the firm Healy & Baillie, LLP and have personal knowledge of documents produced in the above-captioned action.
2. On June 13, 2005, Defendant Associated Electric & Gas Insurance Services Ltd. ("Aegis") produced documents in response to a request for production of documents made by Plaintiff Iroquois Gas Transmission System L.P. ("Iroquois").
3. Among the documents produced by Aegis is an email message from Willie Farmer to Tim Savill, Colin Williams, and others dated May 19, 2005, including related

email messages transmitted along with this message. The documents bearing the Bates numbers A 0370 through A 0371 is a true and correct copy of a portion of this message.

4. Also among the documents produced by Aegis is an email message from Colin Williams to Tim Savill dated May 20, 2005, including related email messages transmitted along with this message. The documents bearing the Bates numbers A 0385 through A 0388 is a true and correct copy of this message.

  
\_\_\_\_\_  
John C. Koster

Sworn to before me this 12<sup>th</sup> day  
of August 2005

  
\_\_\_\_\_  
Notary Public

BOZENA PITIERA  
Notary Public, State of New York  
No. 41-4681877  
Qualified in Queens County  
Commission Expires March 08, 2006

Nov. 30, 2006

**From:** Williams, Colin  
**Sent:** 12 May 2003 16:38  
**To:** 'bgibbens@horizonoffshore.com'  
**Subject:** Gulf Horizon - damage to power cable at New York - 27th February 2003 Our Ref : OR304718/FFO

Bill,

I refer to your e-mail of 5th May to Mike McAleer which he has passed on to me for response. Many apologies for my delay in responding to you.

I note that you are proposing that Charlie Cerise be appointed as lead counsel on this case and, sfac, have no problem with such appointment.

Wrt the case itself, we note that you do not consider that limitation will be an issue in this case. We were advised that repairs to the pipeline were of the order of \$3m ~ 8m and that claims for consequential loss are also likely to be submitted. Do you have any more information in this regard and what is the value of the Gulf Horizon such that limitation is unlikely to be an issue.

Moreover, we have very little information iro this matter so far and quote hereunder a number of questions we raised through JLT to which we have not yet rcvd any reply:

- does the same set of contracts apply as in the case of the Mr Sonny ?
- is Thales involved and do our lawyers consier that we will be able to seek defence and indemnity from Thales as was done in the previous case (and as a matter of interest, have Thales accepted defence and indemnity in the Mr Sonny case) ?
- is the hull policy relevant in this incident (given that the P&I policy only covers FFO risks to the extent that they are not covered under the hull policy) ?
- what are the terms of the CGL policy and is it relevant in this case, as it was in the Mr Sonny case ?
- what are Torben Aabo's views on the likely amount of the claim ?
- what are Lyons Skoufalos' views on liability ?

We would be most grateful if you could answer any of the points raised above.

Regards.  
Colin Williams

DDI : 0207 650 6497  
Fax : 0207 377 2912

2004-06-10\_hull\_uw's\_response

05/18/2004 05:00 AM  
<colin.williams@simsl.com>, Marjorie\_Goodall@ars.aon.com  
Contractors/GULF HORIZON - New York - 27  
cc: "Williams, Colin"  
Mike\_Roberts@JLTGROUP.com,  
Subject: RE: Horizon Offshore  
alleged damage to power cables in  
Feb 03 Our Ref : OR03/304718/FO

Jim,

I note that Members confirm that their H+M policy covers collision and FFO liabilities. As such, please advise why H+M u/w's are not involved in the first claim, i.e. the claim for damage to the power cables by the Gulf Horizon. This would seem to be an FFO matter and, if it is covered by the H+M policy, it does not fall within P&I cover.

Regards.  
Colin Williams

DDI : 0207 650 6497  
Fax : 0207 377 2912

-----Original Message-----

From: Jim\_Montano@ars.aon.com [mailto:Jim\_Montano@ars.aon.com]  
Sent: 17 May 2004 17:17  
To: Williams, Colin  
Cc: Williams, Colin; Mike\_Roberts@JLTGROUP.com; Marjorie\_Goodall@ars.aon.com  
Subject: RE: Horizon Offshore Contractors/GULF HORIZON - alleged damage to power cables in New York - 27 Feb 03 Our Ref : OR03/304718/FO

Colin,  
We have conferred with the Assured regarding coverage, claims and counter-claims arising from the subject casualty and respond to your queries as follows:  
) With respect to coverage under the Assured's H&M policy on the GULF HORIZON, such cover does, indeed, apply to collision and/or contact with fixed and floating objects.  
) Horizon's CGL insurers are aware of all claims and counterclaims so far asserted.  
) No additional information regarding claims for damage and/or fines and penalties regarding archeological sites has been forthcoming. Regards, Jim

"Williams, Colin"

<colin.williams@simsl.com>  
"Jim\_Montano@ars.aon.com"  
Mike\_Roberts@JLTGROUP.com,  
To:  
<Jim\_Montano@ars.aon.com>,"  
ims1.com>

2004-06-10\_hull\_uw's\_response

"williams, colin"

<colin.williams@sims1.com>

05/14/2004 10:54

cc:

AM

Offshore Contractors/GULF HORIZON -

Subject: RE: Horizon

cables in New York - 27 Feb

alleged damage to power

03 Our Ref : OR03/304718/FO

Jim,

Many thanks for your recent e-mail, the contents of which are duly noted.

The second third and fourth set of attachments are all related to the initial incident and would seem to contain nothing new.

With regard to the first attachment, i.e. the answers and counterclaims by Iroquois, this deals with 4 different issues, iro which we would make the following comments:

1).

Firstly, it includes claims for the damages directly flowing from the contacts with the power cables on 27th February 2003. The only outstanding point iro this aspect of the matter (apart from a lawyer's report on the merits of the case generally) is the question of why this is not covered under Member's hull policy (see the 4th paragraph of our e-mail message of 16th April). We await your further news in this regard.

2).

This relates to Iroquois' claim against Horizon for delay generally and for the cost of a DP vessel to complete the project. As advised in our e-mail message of 16th April, this aspect does not fall within Aegis' P&I cover and we would appreciate your confirmation that it is being dealt with by whichever insurers cover Horizon's CGL liabilities.

3).

This relates to a potential indemnity claim by Iroquois in the event claims are raised against them for damage to archaeological sites by the "Gulf Horizon" during the project (this was first raised with you by us on 13th November 2003). We have no further details of this aspect and no actual claims appear to have been raised in connection with this aspect to date. However, please ascertain from Horizon whether they know anything further about it.

4).

This relates to Iroquois' claim against Horizon for lack of performance/poor work product. Again, as advised in our e-mail message of 16th April, this aspect does not fall within Aegis' P&I cover and we would appreciate your confirmation that it is being dealt with by whichever insurers cover Horizon's CGL liabilities.

Regards.

Colin Williams

DDI : 0207 650 6497

Fax : 0207 377 2912

Message

Page 1 of 5

**From:** Willie Farmer [wfarmer@MCGRIFF.COM]**Sent:** 19 May 2005 14:37**To:** Tim Savill (E-mail); Williams, Colin; Rick Bryan; James Sage; Paul Cummins; Kevin Hannington**Cc:** Weldon Corbett; Steve White; Tommy Ebner; Marcy Holmes; claimfileHOU**Subject:** RE: 917-241 [G] RE: Gulf Horizon - alleged dmg to submerged power cables D/L: 23rd February 2003 Our Ref OR02/314718/EFO

Tim,

Confirming our conversation this afternoon, London time, and on behalf of all copied, there has NOT been a denial of claim issued by Hull & Machinery (Package U/Ws) to our assured Horizon Offshore Contracting, Inc. regarding the above casualty. At the present further discussions will be taken up with underwriters, per your comments below, next week.

Thanks and Best Regards,

WHF

-----Original Message-----

**From:** Willie Farmer**Sent:** Thursday, May 19, 2005 6:39 AM**To:** 'Tim Savill'; Williams, Colin; Rick Bryan; James Sage; Paul Cummins; Kevin Hannington**Cc:** Weldon Corbett; Steve White; Tommy Ebner; Marcy Holmes; claimfileHOU**Subject:** 917-241 [G] RE: Gulf Horizon - alleged dmg to u/w pipelines 0 23rd February 20 03 Our Ref OR02/314718/EFO

Tim:

I will be calling you shortly to discuss.

I received a message from Rick Bryan that Package Underwriters (Hull & Machinery) have denied coverage to our assured on the above. From the comments read in J.Hodgett's response to you, that may be the case but is not at all clear. Would seem underwriters are withholding comments on Horizon's potential claim for the moment.

Will discuss with you shortly.

WHF

-----Original Message-----

**From:** Tim Savill [mailto:TimSavill@priceforbes.com]**Sent:** Thursday, May 19, 2005 5:23 AM**To:** Williams, Colin; Rick Bryan; Willie Farmer; James Sage; Paul Cummins; Kevin Hannington**Subject:** FW: Gulf Horizon - allegeddmg to u/w pipelines 0 23rd Febrary 20 03 Our Ref OR02/314718/EFO

Dear All

Please find below the lead underwriters response which does not provide any clarification upon their attorneys advice. Colin shall appreciate receiving your comments.

James suggest you discuss with Burrows soonest upon your return to the office next week

Regards

Tim

Message

Page 2 of 5

**Tim Savill**

Email: timsavill@priceforbes.com  
 Direct Phone: +44(0)207 204 8421  
 Direct Facsimile: +44(0)207 015 2921  
 Mobile Phone: +44(0)788 777 1559

**Price Forbes Limited**

6th Floor, 2 Minster Court, Mincing Lane, London, EC3R 7PD, United Kingdom

Main Telephone: +44(0)207 204 8400

Main Facsimile: +44(0)207 204 8404

www.priceforbes.com

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**From:** Hodgett, John [mailto:John.Hodgett@wellington.co.uk]

**Sent:** 19 May 2005 09:45

**To:** Tim Savill

**Cc:** 'Gerard Kimmitt'; Burrows, Timothy

**Subject:** RE: Gulf Horizon - allegeddmg to u/w pipelines 0 23rd Febraury 20 03 Our Ref OR02/314718/EFO

Tim, as you are aware, only Iriquois have made a claim on the hull policy and that is subject to litigation currently pending in NY (issued, I understand, at the instigation of the Steamship Mutual!!!). Therefore, on the advice of Counsel, I cannot comment to either of you on that litigation or any coverage issues.

Tim Burrows has a copy of Legge Farrow's report for his own confidential information and I will directly provide any further information that Mr Burrows requires.

I'm sorry that you're in the middle of this Tim, but as you can gather from the above I will not be meeting with Mr Williams.

Best John.

-----Original Message-----

**From:** Tim Savill [mailto:TimSavill@priceforbes.com]

**Sent:** 18 May 2005 14:33

**To:** Hodgett, John

**Subject:** FW: Gulf Horizon - allegeddmg to u/w pipelines 0 23rd Febraury 2003 Our Ref OR02/314718/EFO

John - Please find below the Steamship Mutuals latest message , as you will note they are very keen to arrange a meeting , f possible this week. Understand you have Legg Farrows report and we have been requested by Tim Burrows to clarify the claim position during the 60 day extension period. Shall greatly appreciate your assistance in trying to resolve this issue. Please advise if you are available this week to meet with Colin Williams.

Many thanks

Tim

**Tim Savill**

Email: timsavill@priceforbes.com



Message

Page 1 of 4

**From:** Williams, Colin  
**Sent:** 20 May 2005 11:42  
**To:** 'Tim Savill'  
**Subject:** RE: Gulf Horizon - alleged dmg to u/w pipelines 0 23rd Febraury 20 03 Our Ref OR02/314718/EFO  
Tim,

We disappointed that hul u/w's will not discuss.

We did not instigate litigation by Iroquois against hull u/w's. They asked us for additional assured status iro this case and we simply advised them that our cover excluded risks covered by hull u/w's which we consider this to be (and hve been so advising everybody since our e-mail to JLT of 12th March 2003.

Regards  
**Colin Williams**  
Steamship Insurance Management Services Limited  
☎ 0207 650 6497 (direct)  
☎ 07901 670736 (mobile)  
☎ 0207 377 2912 (fax)  
✉ colin.williams@simsl.com

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**From:** Hodgett, John [mailto:John.Hodgett@wellington.co.uk]

file:///C:/Gulf%20Horizon/OR02-304718-EFO-CPW2005-05-20\_email\_response\_to\_PF\_e... 5/26/2005

A 0385

Message

Page 2 of 4

**Sent:** 19 May 2005 09:45

**To:** Tim Savill

**Cc:** 'Gerard Kimmitt'; Burrows, Timothy

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Many thanks

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**From:** Williams, Colin [mailto:colin.williams@simsl.com]

**Sent:** 18 May 2005 09:47

**To:** Tim Savill

**Subject:** Gulf Horizon - allegeddmg to u/w pipelines 0 23rd Febraury 2003 Our Ref OR02/314718/EFO

Message

Page 3 of 4

Dear Tim

Wrt our telcon of last evening, as you are aware both Aegis and hull u/ws are facing demands (and legal action) from Iroquois for confirmation of additional assured status and reimbursement of fees incurred by them of over \$600,000 in connection with the captioned matter.

Aegis' position is that the underlying risk for which Iroquois is seeking additional assured status is not covered by Aegis to the extent it is recoverable from hull u/ws and therefore Aegis is not involved. We understand that hull u/ws current position is that this claim is rejected by them due to late notification. However the brokers, at least, have clearly been aware of this case from the outset, having been notified of it by both Horizon and Iroquois.

Given the size of the underlying claim, this case is not going to go away and is about to enter the discovery/deposition stage when costs will begin to mount rapidly, both for Aegis and hull u/ws, irrespective of the outcome of the cover position. Against this, Aegis' maximum potential involvement, even if their cover is involved (which Aegis argue is not the case) is only \$1m.

Acc, it seems to us that it would be sensible to meet and discuss this matter in the very near future before legal costs start to really escalate. A further aspect to be considered is that Horizon are arguing that, acc to the Horizon/Iroquois contract, Iroquois are only entitled to additional assured status to the extent that Horizon's negligence caused the underlying incident and Horizon are arguing that they were not the cause of the incident. Acc, Horizon's views on the current cover dispute with Iroquois would be welcome. The undersigned will be travelling next week, after which discovery is upon us.

Acc, do you consider a meeting later this week is possible?

Regards

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